

Section 3 of the Act, 35 ILCS 505/3 states that no person shall act as a distributor of motor fuel within this State without first securing a license to act as a distributor of motor fuel from the Department. (This is a GIL).

March 20, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 10, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

At the suggestion of PERSON of the Illinois Department of Revenue, I am writing this letter in an attempt to resolve some confusion related to reporting of fuel taxes by my client in the State of Illinois. I am an in-house attorney employed by COMPANY, an owner, along with BUSINESS, of CORPORATION, an entity which was formed in 1998 by COMPANY and BUSINESS to act as their exclusive **agent** for the marketing, sale and distribution of certain energy products, including refined fuel products (including motor fuels subject to state fuel taxes).

Both COMPANY and BUSINESS are organized as agricultural cooperative corporations. In order to maximize all federal income tax benefits for COMPANY and BUSINESS, and their respective stockholder-members, as relates to sales of energy products, it is imperative that CORPORATION act **solely** as the **agent** for its two owners. In other words:

- CORPORATION never owns title to refined products it acquires, manages, and sells as the agent for its owners, COMPANY and BUSINESS.
- Title to all inventories of refined products acquired and managed by CORPORATION, as the agent for its owners, COMPANY and BUSINESS, are owned jointly (approximately 60%/40%) by COMPANY and BUSINESS.
- Title to all refined products sold by CORPORATION, as the agent for its owners, transfers jointly from COMPANY and BUSINESS to their customers (with each sale transferred approximately 60% by COMPANY and 40% by Farmland).
- CORPORATION, as agent for its owners, sends out one invoice to customers purchasing energy products from COMPANY and BUSINESS.

From a technically correct perspective, for fuel tax reporting, each sale should be reported by customers to the various states' revenue departments as being purchased from CORPORATION, as agent for COMPANY and BUSINESS, with COMPANY and BUSINESS, both of which are licensed as motor fuel distributors in Illinois, identified as supplier of part of the products sold.

However, to simplify tax reporting for its customers, as well as the various states' departments of revenue, the decision was made by COMPANY and BUSINESS to identify on each invoice to their customers only one of the companies for tax reporting purposes. As an example, I have attached an invoice which clearly states that the customer should report the purchase using BUSINESS tax ID number. Please note that this approach has been followed in all states in which CORPORATION, as agent for COMPANY and BUSINESS, engages in the sale of motor fuels, not just the State of Illinois. It is the sincere belief of both COMPANY and BUSINESS that this approach is not violative of any federal or state law, but rather, results in a simplified process for a somewhat complex fact scenario, resulting in the same net effect relative to fuel taxes for all states.

Apparently, during 1999, some customers of CORPORATION, as agent for its two parents, have incorrectly reported to the State of Illinois that they purchased products from CORPORATION, in contrast to reporting the purchase from BUSINESS as instructed on the invoice. As I understand the situation, this error resulted in the Illinois Department of Revenue generating notices of liability for motor fuel tax to CORPORATION, along with a demand that CORPORATION cease doing business in Illinois, apparently based on the mistaken belief that CORPORATION was selling gasoline without a license. However, as I have set forth above, such activity should have been reported as sales by BUSINESS, a valid licensee.

The first assessment that was received by CORPORATION was dated August 30, 1999. In a letter to INDIVIDUAL at the Motor Fuel Tax Division of the Illinois Department of Revenue dated September 30, 1999, a copy of which is attached, GENTLEMAN attempted to explain the situation.

In response to this letter, GENTLEMAN then received a letter from INDIVIDUAL, dated November 23, 1999, a copy of which is also attached. A reading of this letter would leave the impression that INDIVIDUAL has concluded that CORPORATION is a d/b/a of BUSINESS, and then decided that Section 4.15 of the Illinois Business Corporation Act pertaining to a company's right to 'elect to adopt an assumed corporate name' applies to this situation. She then makes additional statements, including that the 'actual corporate name' must be identified in the 'upper portion of the invoice'. Finally, she recommends that this may be 'best accomplished by explicit language on those documents, such as XYZ Corp. d/b/a/ Z company'.

Before I make comments on this letter, let me finish the chronology by pointing out that during December of 1999, various conversations have occurred between employees of the Illinois Department of Revenue and GENTLEMAN (who is an employee of COMPANY, providing tax services to CORPORATION) and SIR (who is an employee of BUSINESS providing tax services to CORPORATION). At some point, apparently, an employee at the Illinois Department of Revenue indicated to SIR that even if those customers who had incorrectly filed returns showing CORPORATION as the supplier filed amended returns showing Farmland as the supplier for fuel tax reporting purposes, the State would not accept these documents until the invoices are changed to comply with INDIVIDUAL's letter.

In early January, this matter was referred to me by GENTLEMAN and SIR, with a request that I try to resolve these issues. I placed a telephone call to PERSON and discussed the situation. In particular, I explained that the request made by INDIVIDUAL was based on an incorrect conclusion – CORPORATION is not a d/b/a of BUSINESS, and to change invoices to say so is not legally correct. PERSON indicated she would review the matter with her supervisor; she and I discussed this matter again on January 31 (after I returned to the office after a vacation), and she suggested I write this letter to your office.

I have reviewed Section 4.15 of the Illinois Business Corporation Act, but do not understand how it applies to this situation. I have explained the legal status of CORPORATION, COMPANY, and BUSINESS earlier in this letter, and there is no 'assumed corporate name' implicit in this relationship. INDIVIDUAL's suggestion to use a d/b/a description is not an accurate representation of the legal status, and I cannot advise my client to misrepresent the legal status on a document. Further, in her letter, INDIVIDUAL makes reference to putting certain information on the 'upper portion of the invoices'. I have discussed this reference with PERSON, who has explained that is the Department's requirement. However, she was not able to point me to a rule setting forth such a requirement, particularly when all the information that is required for the Department to determine that the proper amount of motor fuel tax has been remitted is on the document already.

I would certainly appreciate a phone call to discuss the issues that are set forth herein. I cannot specifically request a particular action by your office, as, quite frankly, I am confused why there is even an issue, once the incorrect returns are amended. The process that CORPORATION is following in Illinois is identical to all of the other states in which motor fuels are sold by CORPORATION, as agent for COMPANY and BUSINESS. Since the process is simpler for all of the involved parties, including the Illinois Department of Revenue, and achieves the same end result as the technically correct process of splitting each sale, it seems as if the adopted process should be acceptable.

Purchasers are required to file schedules (Schedules A, SA, DA, E or SE) providing

information about their purchases and indicating the names of sellers from whom they purchased product. Apparently a customer listed CORPORATION as the seller of the motor fuel. Further, the invoice you provided lists CORPORATION as the seller. As you stated in your letter, CORPORATION is not a licensed distributor of motor fuel in Illinois. As such, it cannot distribute motor fuel. I know that you have made representations that CORPORATION never takes title to the motor fuel in question. However, by all appearances, CORPORATION is acting as a distributor of motor fuel without a distributor's license. By adding language in the body of the invoice that "[f]or excise tax reporting purposes only, report these gallons under BUSINESS" does not rectify the situation or make CORPORATION any less than the distributor of the fuel. After all, your own customers believe that CORPORATION is their distributor. If the Department allowed such arrangements, the possibility for tax evasion would arise.

CORPORATION either needs to apply for a distributor license or the invoices need to reflect the true distributor of the motor fuel. Unless this is done, the problems your billing practices have created are likely to reoccur. Please note that Section 3 of the Act, 35 ILCS 505/3 states that no person shall act as a distributor of motor fuel within this State without first securing a license to act as a distributor of motor fuel from the Department. See 35 ILCS 505/15 for criminal penalties associated with this violation of the Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.